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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,423	07/18/2003	Terry A. Miller	MILLERT-1	1748

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EXAMINER


VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/621,423	Applicant(s) MILLER ET AL.	
	Examiner Andrea M. Valenti	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 8-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

A) Floral arrangement with foam and grid work, Figs. 1-3 (claims 1-7 and 15-17)

B) Floral arrangement with foam protrusions, no grid work, Fig. 4 (claims 8-14)

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there is no generic claim.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Eric A. LaMorte on 20 September 2004 a provisional election was made with traverse to prosecute the invention of species A, claims 1-7 and 15-17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8-14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,414,957 to Kenney.

Regarding Claims 1 and 15, Kenney teaches a floral arrangement assembly and method with a foam structure (#22) having a base level and at least one other level disposed atop the base level (Fig. 3), wherein the base level and the at least one other level differ in size; and a grid work (#13, 14, 15, 16, 18) extending over the foam structure, wherein the grid work conforms to the foam structure and demarcates the foam structure into a plurality of evenly distributed areas

Regarding Claims 2 and 16, Kenney teaches the base structure (#12) for supporting the foam structure.

Regarding Claims 4 and 17, Kenney teaches the grid work engages the base structure, wherein the foam structure is enveloped between said base structure (Fig. 3).

Regarding Claim 5, Kenney teaches wherein said base structure includes a tray (#12) and a support (#11) extending from said tray for supporting said tray.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,414,957 to Kenney in view of U.S. Patent No. 3,336,697 to Davis.

Regarding Claim 3, Kenney is silent on the base structure contains at least one prong that extends up into the foam structure, thereby retaining the foam structure in a set position on the base structure. However, Davis teaches a floral arrangement assembly with at least one prong (Davis Fig. 7 #56). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention to hold the foam block in place during transport and for more structural stability as taught by Davis (Davis Col. 4 line 3-15).

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,414,957 to Kenney in view of U.S. Patent Pub. No. US 2003/0136049 to Ghiotti.

Regarding Claim 6, Kenney teaches the tray (#12) and a support (#11), but is silent on them being selectively attachable and removable from each other. However, Ghiotti teaches a floral arranging tray selectively attachable with a support (Ghiotti #26 and page 2 paragraph [0021]). It would have been obvious to one of ordinary skill in the art to modify the teachings of Kenney with the teachings of Ghiotti at the time of the invention for the advantage of mixing and matching different handle designs as taught by Ghiotti.

Regarding Claim 7, Kenney as modified teaches said support selected from a group consisting bouquet handles, centerpiece stands and ground spikes (#11).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

French Patent FR 2620591 A1; U.S. Patent No. 6,688,040; U.S. Patent No. 2,891,354; U.S. Patent No. 5,454,189; U.S. Patent No. 6,393,762; U.S. Patent No. 5,070,644; U.S. Patent No. 4,204,365; U.S. Patent No. 6,289,631; U.S. Patent No. 3,651,601; U.S. Patent No. 3,962,825; U.S. Patent No. 4,566,221; U.S. Patent No. 3,183,624; U.S. Patent No. 5,450,691; U.S. Patent No. 6,007,882.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-

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3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

21 September 2004



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600